IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 287 OF 2004

Chandrakant Annaso Patil ..Petitioner
Vs.
1. Mansing Shamrao Shinde
and anr. ..Respondents

Mr. N.J. Patil for petitioner.
Mr. D.R. More, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : August 27, 2007.

P.C.:

1. Heard Mr. N.J. Patil the learned counsel for the petitioner. The petitioner was impleaded as an accused in a private complaint filed by the respondent no.1 and registered as Criminal Complaint No.37 of 2000 before the learned JMFC at Ichalkaranji. Instead of issuing process against the accused in the said complaint filed for the offence punishable under Sections 406, 420, 465, 467, 468, 469 and 471 of IPC, the learned Magistrate invoked his powers under Section 202 of Cr.P.C. and ordered police investigation. The police submitted report on 27/9/2000. On perusal of the said report the learned Magistrate specifically observed that the signature on the subject cheque appeared to be different than other three cheques and, therefore, the police report was in

conformity with the complaint averments. Inspite of these observations, the learned Magistrate dismissed the complaint on 21/8/2001. The complainant, therefore, filed Criminal Revision Application No. 330 of 2002 which came to be allowed by the learned IInd Adhoc Additional Sessions Judge, Kolhapur with the following operative order:-

> ". The order passed by the Magistrate below Exh.1 in Criminal Case No.37 of 2000 is hereby set aside with directions to J.M.F.C., Ichalkaranji to go through the record of the case and pass the order according to the law."

. Hence, this petition.

2. As directed earlier Mr. N.J. Patil the learned counsel for the petitioner has placed on record the investigation report and a perusal of the same does show that a prima facie case was made out in support of the allegations in the complaint. It is the contention of the present petitioner that the

cheque No.69545 for an amount of Rs.1,00,000/- drawn in his favour was dishonoured and, therefore, he filed a complaint under Section 138 of the Negotiable Instruments Act, 1881, the present respondent no.1 filed a private complaint as a counter blast and only to defeat the complaint which is filed by the petitioner under Section 138 of the Negotiable Instruments Act, 1881. These are the matters which will have to be gone through by the learned JMFC while considering the record as directed by the Sessions Court vide the impugned order dated 5/1/2004. Whether to issue the process or to dismiss the complaint is an issue which the learned JMFC will have to consider afresh on perusal of the record as available before him and, therefore, no interference is called for in the view taken by the revision court. Undoubtedly, the petitioner also will have to be heard when the learned Magistrate has been directed to reconsider the record of the case and passe the appropriate order according to the law.

3. Hence, the petition is rejected summarily. Ad-interim order, if any, stands vacated.

(B.H. Marlapalle,J.)